to them for judicial legislation, there must unavoidably be two opinions. It would seem, however, that there is a serious discrepancy between the results reached in the cases of competition between rivals in the same trade, and the decisions in the cases where the struggle for economic advantage is between employers and employed. If cases such as *Mogul Steamship Co.* v. *McGregor*, *supra*, in England, and *Macauley* v. *Tierney*, 33 Atl. Rep. 1 (R. I.), and *Bowen* v. *Mattheson*, 14 Allen, 499, in this country, were decided according to the best public policy, as no one hitherto has denied, then in *Temperton* v. *Russell*, [1893] 1 Q. B. 715, *Flood* v. *Jackson*, [1895] 2 Q. B. 21, *Lyons* v. *Wilkins*, [1896] 1 Ch. 811, and finally this present case of *Vegelahn* v. *Gunter*, the courts have gone too far in the dangerous direction of interfering with the struggle of economic forces.

That the doctrine laid down in the recent English cases has by no means met with universal acceptance in that country, may be gathered from the sharp criticisms of *Flood* v. *Jackson* and *Lyons* v. *Wilkins*, which appeared at the time those cases were decided, in 12 Law Quarterly Review, 5–7, 201. It may be guessed that these criticisms were written by the learned editor of the Review, Sir Frederick Pollock, who has always opposed the extension of this class of actions. The very latest English authority, the second edition of Clerk & Lindsell on Torts, contains (pp. 14–25) the fullest treatment that has yet appeared of this whole class of cases, where "malice" or want of justifiable motive is made the foundation of liability; and in it the soundness of *Temperton* v. *Russell* and *Flood* v. *Jackson* is doubted (p. 22) on the ground of their inconsistency with *Mogul Steamship Co.* v. *McGregor*. In the Addenda, facing page 1, the case of *Lyons* v. *Wilkins* is noticed, and the suggestion made that it may be supported on the ground that persuasion by a picket necessarily involves some unlawful intimidation. The mere presence of a picket probably does in fact convey a covert threat of violence. For this reason the Massachusetts court may have practically reached a right result by enjoining the picketing altogether; but still Mr. Justice Holmes seems to have the advantage over the majority of the court in the discussion.

Protection of Minority Stockholders. — The jurisdiction of equity to protect minority stockholders from the fraudulent or oppressive acts of a majority in control is firmly established. Difficult questions are, however, continually arising, because frauds in corporate affairs are often perpetrated by the cleverest of men acting under the best of legal advice. The New York Court of Appeals has recently dealt a severe blow at a fraudulent game in *Farmers' Loan & Trust Co.* v. *N. Y. & Northern Ry. Co.*, 44 N. E. Rep. 1043. This was an action to foreclose a second mortgage, two minority stockholders being allowed to come in and defend. It was shown that the New York Central Railroad determined to secure the Northern's property, and accordingly purchased a majority of its stock, and over $2,000,000 of an issue of $3,500,000 second mortgage bonds. A scheme to lease the property was wisely abandoned when opposition on the part of minority stockholders was manifested. The terms of the second mortgage, however, were that in case of default, etc., the trustee "may, and upon the written request of the holders of $2,000,000 in amount of said bonds . . . shall apply to any court . . . for a foreclosure and sale." It appeared that in effect the trustee brought this suit

at the request of the New York Central. The defendants offered evidence to show that the New York Central was responsible for the failure to redeem the default on the bonds before it was too late, since the directors of the Northern, under the Central's control, diverted earnings and refused profitable traffic in order to enable the Central to procure a foreclosure and purchase at the sale. For rejection of this evidence the Court of Appeals has ordered a new trial, reversing the judgment of the General Term of the Supreme Court (28 N. Y. Supp. 933). The decision is based on the theory that it is an attempt in equity to secure the benefits of a wrong. That the trustee might have brought the action of his own motion, an argument that had weight below, is answered by saying that he might not and has not, so that the objection to the suit is not avoided.

To afford protection here is eminently proper. Not only are the rights of minority stockholders involved, but also the rights of other holders of bonds. That the latter will be given their full legal rights, even though the defendants prove their case at the new trial, is not to be doubted. The interesting question is whether a solution of the difficulty, more satisfactory and just to all parties than a foreclosure by the trustee, will not be found. If the case is proved, the New York Central is guilty of a wrong, for which no recovery can be had at law because of their control of the corporation. In the language of Mr. Morawetz it is "a conspiracy to commit a breach of trust" (Vol. I, § 529), which has in part succeeded. Under such circumstances had benefits been received under a contract, or money been wrongfully diverted, restitution would be compelled. Why should not equity as well decree reparation for the wrong? The ground of recovery in either case is that things must be put *in statu quo*. This would be a result as acceptable to bondholders as to stockholders. The former would receive back-interest, be protected from the risk of loss incident to a sale, and would still have their investment. It is conceived that little difficulty would be found in getting the necessary parties before the court by amendment under modern rules of practice.

THE WAY OF THE PHYSICIAN IS HARD. — An interesting example of the extent of a physician's liability for negligence is furnished by a recent decision of the Supreme Court of Massachusetts, *Harriott* v. *Plimpton*, 44 N. E. Rep. 992. The facts of the case were briefly as follows. The plaintiff, who was engaged to marry the daughter of M., was falsely accused of being afflicted with a venereal disease. M. employed the defendant, a physician, to examine the plaintiff, who consented to the transaction, and to report the result to himself and family. The defendant mistakenly pronounced the disease to be venereal. In consequence the engagement was broken. The court held that the defendant's duty of exercising ordinary diligence, care, and skill in a professional undertaking extended to a case where only information was sought; and that the breaking of the engagement was a damage not too remote to sustain the action. This conclusion, it is submitted, is entirely correct. The evident justice of the result, however, is at first more apparent than the really substantial grounds of decision which a further consideration of the case reveals.

It is a perfectly well established principle of law, "that he who undertakes the public practice of any profession undertakes that he has the